

2008

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Crimes Legislation Amendment
(Enhanced Child Protection from
Predatory Tourism Offences) Bill 2008**

No. , 2008

(Senator Bernardi)

**A Bill for an Act to amend the law relating to
sexual offences against children, and for related
purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **sexual offences against children, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Crimes Legislation Amendment*
9 *(Enhanced Child Protection from Predatory Tourism Offences) Act*
10 2008.

11 **2 Commencement**

12 (1) Each provision of this Act specified in column 1 of the table
13 commences, or is taken to have commenced, in accordance with
14 column 2 of the table. Any other statement in column 2 has effect
15 according to its terms.

1

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, item 1	The day on which this Act receives the Royal Assent.	
3. Schedule 1, item 2 to 22	The 28th day after the day on which this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

8

3 Schedule(s)

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12

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendments

4

Australian Crime Commission Act 2002

5

1 Subsection 4(1) (paragraph (d) of the definition of *serious and organised crime*)

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7

After “*Proceeds of Crime Act 2002*,” insert “an offence against section 474.19, 474.20, 474.22, 474.23, 474.26 or 474.27 of the *Criminal Code*.”.

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Crimes Act 1914

11

2 After section 9B

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Insert:

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10 Forfeiture of child abuse or child pornography material used in commission of sexual offences against children

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15

(1) If a court:

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(a) convicts a person of an offence referred to in subsection (4);
or

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(b) makes an order under section 19B in relation to a person charged with such an offence;

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the court must order the forfeiture to the Commonwealth of any of the following that were used or otherwise involved in the commission of the offence:

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(c) child abuse material or child pornography material (within the meaning of Part 10.6 of the *Criminal Code*);

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25

(d) an article that contains such material.

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Note: See sections 473.1 and 473.4 of the *Criminal Code* for the meanings of *child abuse material* and *child pornography material*.

27

28

(2) If:

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(a) a forfeiture application is made to a court (see section 11);
and

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(b) the court is satisfied, on the balance of probabilities, that an offence referred to in subsection (4) has been committed by a person;

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1 the court must order the forfeiture to the Commonwealth of any of
2 the following that were used or otherwise involved in the
3 commission of the offence:

- 4 (c) child abuse material or child pornography material (within
5 the meaning of Part 10.6 of the *Criminal Code*);
- 6 (d) an article that contains such material.

7 Note: See sections 473.1 and 473.4 of the *Criminal Code* for the meanings
8 of *child abuse material* and *child pornography material*.

- 9 (3) A finding of the court for the purposes of subsection (2):
 - 10 (a) need not be based on a finding that a particular person
11 committed any offence; and
 - 12 (b) need not be based on a finding as to the commission of a
13 particular offence, and can be based on a finding that some
14 offence of a kind referred to in subsection (4) was committed.
- 15 (4) For the purposes of this section, the offences are:
 - 16 (a) an offence against section 474.19, 474.20, 474.22, 474.23,
17 474.26 or 474.27 of the *Criminal Code*; and
 - 18 (b) an offence against Division 272 or 273 of the *Criminal Code*.

19 **11 Applications for an order for forfeiture under subsection 10(2)**

- 20 (1) An application (a *forfeiture application*) for an order under
21 subsection 10(2) may be made by the Director of Public
22 Prosecutions or a constable to the Federal Court of Australia, the
23 Federal Magistrates Court or a court of a State or Territory.
- 24 (2) A forfeiture application must be accompanied by an affidavit
25 dealing with the matters referred to in subsection 10(2).
- 26 (3) A person who makes a forfeiture application must give written
27 notice of the application to:
 - 28 (a) any person who claims ownership of, or a right of custody or
29 control over, material or an article covered by the
30 application; and
 - 31 (b) any person whom the applicant reasonably believes may have
32 ownership of, or a right of custody or control over, material
33 or an article covered by the application.
- 34 (4) A court to which a forfeiture application is made:

- 1 (a) may still make an order under subsection 10(2) if a person
2 entitled to be given notice of the application fails to appear at
3 the hearing of the application; and
4 (b) may, at any time after the making of the application, make
5 any interim orders that it considers appropriate and, in
6 particular, orders relating to the delivery or retention of
7 things pending the decision of the court on the application.

8 **12 Effect of forfeiture under section 10**

- 9 (1) Material or an article forfeited to the Commonwealth under
10 section 10 becomes the property of the Commonwealth.
- 11 (2) A constable may, without warrant, seize material or an article that
12 is forfeited to the Commonwealth under section 10.
- 13 (3) If material or an article is forfeited to the Commonwealth under
14 section 10:
- 15 (a) the material or article must be retained until the later of the
16 following times:
- 17 (i) 3 months after the article is forfeited;
- 18 (ii) the time when the Commissioner is satisfied that the
19 material will not be required in an investigation or
20 proceedings under a law of the Commonwealth or of a
21 State or Territory; and
- 22 (b) after the later of the times referred to in paragraph (a), the
23 Commissioner may deal with the material or article in any
24 way the Commissioner considers appropriate, including, but
25 not limited to, destroying the material or article.

26 **12A Copies of articles forfeited under section 10**

- 27 (1) This section applies to a person who is the owner of, or has a right
28 of custody or control over, an article that is forfeited to the
29 Commonwealth under section 10.
- 30 (2) If the article is in the custody, possession or control of a
31 Commonwealth officer, the officer must, on request by the person,
32 give the person a copy of so much of the article, or so much of the
33 information contained in the article, as:
- 34 (a) can readily be copied; and

- 1 (b) does not constitute child abuse material or child pornography
2 material for the purposes of section 10.
- 3 (3) The Commonwealth officer need not comply with subsection (2) if
4 he or she believes on reasonable grounds that to do so might:
5 (a) endanger the safety of a person; or
6 (b) prejudice an investigation or prosecution.

7 **12B Compensation for articles forfeited under section 10**

- 8 (1) This section applies to a person:
9 (a) who is the owner of, or has a right of custody or control over,
10 an article that is forfeited to the Commonwealth under
11 section 10; and
12 (b) who is not:
13 (i) a person convicted of the offence to which the forfeiture
14 relates; or
15 (ii) a person in relation to whom an order was made under
16 section 19B in relation to the offence to which the
17 forfeiture relates.
- 18 (2) If the article is electronic equipment or a data storage device, the
19 Commonwealth is liable to pay a reasonable amount of
20 compensation to the person in relation to the replacement of the
21 article.
- 22 (3) If the Commonwealth and the person do not agree on the amount
23 of the compensation, the person may institute proceedings in a
24 court of competent jurisdiction for the recovery from the
25 Commonwealth of such reasonable amount of compensation as the
26 court determines.
- 27 (4) In this section:
28 *data storage device* means a thing containing, or designed to
29 contain, data for use by a computer.

30 **3 Paragraph 15Y(1)(a)**

31 Repeal the paragraph.

32 **4 After paragraph 15Y(1)(caa)**

33 Insert:

- 1 (cab) an offence against Division 272 of the *Criminal Code* (child
2 sex offences outside Australia); or
3 (cac) an offence against Division 273 of the *Criminal Code*
4 (offences involving child pornography material or child
5 abuse material outside Australia); or

6 **5 Paragraph 15Y(1)(e)**

7 Omit “paragraph (a), (b), (c), (caa) or (d)”, substitute “paragraph (b),
8 (c), (caa), (cab), (cac) or (d)”.

9 **6 Paragraph 15Y(1)(f)**

10 Omit “paragraph (a), (b), (c), (caa), (d) or (e)”, substitute
11 “paragraph (b), (c), (caa), (cab), (cac), (d) or (e)”.

12 **7 Section 15YT**

13 Repeal the section, substitute:

14 **15YT Video link evidence provisions relating to child sex offences**
15 **outside Australia unaffected**

16 Nothing in this Part affects the operation of:

- 17 (a) Subdivision D of Division 272 of the *Criminal Code* (child
18 sex offences outside Australia—video link evidence); or
19 (b) Subdivision D of Division 273 of the *Criminal Code*
20 (offences involving child pornography material or child
21 abuse material outside Australia—video link evidence).

22 **8 Part IIIA**

23 Repeal the Part.

24 ***Criminal Code Act 1995***

25 **9 At the end of Chapter 8 of the *Criminal Code***

26 Add:

1 **Division 272—Child sex offences outside Australia**

2 **Subdivision A—Preliminary**

3 **272.1 Definitions**

4 In this Division:

5 *act of indecency* has the meaning given by section 272.2.

6 *induce* means induce by threats, promises or otherwise.

7 *offence*, in the case of a reference to an offence against this
8 Division or against a particular provision of it, has a meaning
9 affected by section 272.4.

10 *sexual intercourse* has the meaning given by section 272.3.

11 **272.2 Meaning of *act of indecency***

12 (1) In this Code, *act of indecency* means an act that:

- 13 (a) is of a sexual nature; and
14 (b) involves the human body, or bodily actions or functions; and
15 (c) is so unbecoming or offensive that it amounts to a gross
16 breach of ordinary contemporary standards of decency and
17 propriety in the Australian community.

18 (2) To avoid doubt, *act of indecency* includes an indecent assault.

19 **272.3 Meaning of *sexual intercourse***

20 (1) In this Code, *sexual intercourse* means:

- 21 (a) the penetration, to any extent, of the vagina or anus of a
22 person by any part of the body of another person; or
23 (b) the penetration, to any extent, of the vagina or anus of a
24 person, carried out by another person by an object; or
25 (c) fellatio; or
26 (d) cunnilingus; or
27 (e) the continuation of any activity mentioned in paragraph (a),
28 (b), (c) or (d).

- 1 (2) In this Code, *sexual intercourse* does not include an act of
2 penetration that:
3 (a) is carried out for a proper medical or hygienic purpose; or
4 (b) is carried out for a proper law enforcement purpose.
- 5 (3) For the purposes of this section, *vagina* includes:
6 (a) any part of a female person's genitalia; and
7 (b) a surgically constructed vagina.

8 **272.4 Extension of criminal responsibility**

- 9 (1) A reference in this Division (except section 272.16) to an offence
10 against this Division or against a particular provision of it includes:
11 (a) a reference to:
12 (i) an offence against section 6 of the *Crimes Act 1914*; or
13 (ii) an offence against section 11.1, 11.5 or 272.16 of this
14 Code;
15 that relates to an offence against this Division or against that
16 provision of it; and
17 (b) a reference to an offence against this Division, or against that
18 provision of it, because of section 11.2 or 11.3.
- 19 (2) A reference in section 272.16 to an offence against this Division or
20 against a particular provision of it does not include a reference to
21 such an offence because of section 11.2.
- 22 (3) Section 11.1 does not apply to an offence against section 272.11,
23 272.12 or 272.17.
- 24 (4) Section 11.4 does not apply to an offence against this Division.
- 25 (5) Section 11.5 does not apply to an offence against section 272.16.

26 **272.5 Who can be prosecuted for an offence committed overseas**

- 27 A person must not be charged with an offence against this Division
28 that the person allegedly committed outside Australia unless, at the
29 time of the offence, the person was:
30 (a) an Australian citizen; or
31 (b) a resident of Australia; or

- 1 (c) a body corporate incorporated by or under a law of the
2 Commonwealth or of a State or Territory; or
3 (d) any other body corporate that carries on its activities
4 principally in Australia.

5 **272.6 Saving of other laws**

6 This Division is not intended to exclude or limit the operation of
7 any other law of the Commonwealth or any law of a State or
8 Territory.

9 **Subdivision B—Sexual offences against children overseas**

10 **272.7 Sexual intercourse with person under 16**

- 11 (1) A person commits an offence if:
12 (a) the person engages in sexual intercourse with another person;
13 and
14 (b) the other person is under 16; and
15 (c) the sexual intercourse is engaged in outside Australia.

16 Penalty: Imprisonment for 17 years.

- 17 (2) Absolute liability applies to paragraphs (1)(b) and (c).

18 Note 1: For *absolute liability*, see section 6.2.

19 Note 2: For a defence based on belief about age, see section 272.13.

20 **272.8 Inducing person under 16 to engage in sexual intercourse**

- 21 (1) A person (the *first person*) commits an offence if:
22 (a) the first person induces a second person to engage in sexual
23 intercourse with a third person in the presence of the first
24 person; and
25 (b) the second person is under 16; and
26 (c) the sexual intercourse is engaged in outside Australia.

27 Penalty: Imprisonment for 17 years.

- 28 (2) Absolute liability applies to paragraphs (1)(b) and (c).

29 Note 1: For *absolute liability*, see section 6.2.

30 Note 2: For a defence based on belief about age, see section 272.13.

1 **272.9 Sexual conduct involving person under 16**

2 (1) A person commits an offence if:

- 3 (a) the person commits an act of indecency on another person;
4 and
5 (b) the other person is under 16; and
6 (c) the act is committed outside Australia.

7 Penalty: Imprisonment for 15 years.

8 (2) A person commits an offence if:

- 9 (a) the person submits to an act of indecency committed by
10 another person; and
11 (b) the other person is under 16; and
12 (c) the act is committed outside Australia.

13 Penalty: Imprisonment for 15 years.

14 (3) A person (the *first person*) commits an offence if:

- 15 (a) the first person commits an act of indecency; and
16 (b) the act of indecency is committed in the presence of another
17 person; and
18 (c) the first person intends to derive gratification from the other
19 person's presence during the act; and
20 (d) the other person is under 16; and
21 (e) the act is committed outside Australia.

22 Penalty: Imprisonment for 15 years.

23 (4) A person (the *first person*) commits an offence if:

- 24 (a) the first person submits to an act of indecency committed by
25 a second person; and
26 (b) the act of indecency is committed in the presence of a third
27 person; and
28 (c) the first person intends to derive gratification from the third
29 person's presence during the act; and
30 (d) the third person is under 16; and
31 (e) the act is committed outside Australia.

32 Penalty: Imprisonment for 15 years.

33 (5) A person (the *first person*) commits an offence if:

- 1 (a) the first person engages in sexual intercourse with a second
2 person; and
3 (b) the sexual intercourse is engaged in in the presence of a third
4 person; and
5 (c) the first person intends to derive gratification from the third
6 person's presence during the sexual intercourse; and
7 (d) the third person is under 16; and
8 (e) the sexual intercourse is engaged in outside Australia.

9 Penalty: Imprisonment for 15 years.

- 10 (6) Absolute liability applies to paragraphs (1)(b) and (c), (2)(b) and
11 (c), (3)(d) and (e), (4)(d) and (e) and (5)(d) and (e).

12 Note 1: For *absolute liability*, see section 6.2.

13 Note 2: For a defence based on belief about age, see section 272.13.

- 14 (7) For the purposes of an offence against subsection (1), (2), (3) or
15 (4), absolute liability applies to the physical element of
16 circumstance that the act of indecency referred to in that subsection
17 is in fact an act of indecency.

18 Note: For *absolute liability*, see section 6.2.

19 **272.10 Inducing person under 16 to be involved in sexual conduct**

- 20 (1) A person (the *first person*) commits an offence if:

- 21 (a) the first person induces a second person to commit, to submit
22 to, or to be present while a third person commits, an act of
23 indecency in the presence of the first person; and
24 (b) the second person is under 16; and
25 (c) the act is committed:
26 (i) outside Australia; and
27 (ii) by or on a person other than the first person.

28 Penalty: Imprisonment for 15 years.

- 29 (2) A person (the *first person*) commits an offence if:

- 30 (a) the first person induces a second person to be present while a
31 third and fourth person engage in sexual intercourse in the
32 presence of the first and second persons; and
33 (b) the second person is under 16; and
34 (c) the sexual intercourse is engaged in outside Australia.

1 Penalty: Imprisonment for 15 years.

2 (3) Absolute liability applies to paragraph (1)(b),
3 subparagraph (1)(c)(i) and paragraphs (2)(b) and (c).

4 Note 1: For *absolute liability*, see section 6.2.

5 Note 2: For a defence based on belief about age, see section 272.13.

6 (4) For the purposes of an offence against subsection (1), absolute
7 liability applies to the physical element of circumstance of the
8 offence that the act of indecency referred to in that subsection is in
9 fact an act of indecency.

10 Note: For *absolute liability*, see section 6.2.

11 **272.11 Engaging in conduct to procure persons under 16 years of**
12 **age**

13 (1) A person (the *first person*) commits an offence if:

14 (a) the first person engages in conduct in relation to a second
15 person; and

16 (b) the first person does so with the intention of procuring the
17 second person:

18 (i) to engage in, or submit to, sexual activity with the first
19 person outside Australia; or

20 (ii) to be present while the first person engages in, or
21 submits to, sexual activity outside Australia; and

22 (c) the second person is someone:

23 (i) who is under 16; or

24 (ii) who the first person believes to be under 16; and

25 (d) any of the following apply:

26 (i) the conduct referred to in paragraph (a) occurs wholly
27 or partly outside Australia;

28 (ii) the second person is outside Australia when the conduct
29 referred to in paragraph (a) occurs;

30 (iii) the conduct referred to in paragraph (a) occurs wholly in
31 Australia and the second person is in Australia when
32 that conduct occurs.

33 Penalty: Imprisonment for 15 years.

34 (2) A person (the *first person*) commits an offence if:

- 1 (a) the first person engages in conduct in relation to a second
- 2 person; and
- 3 (b) the first person does so with the intention of procuring the
- 4 second person:
 - 5 (i) to engage in, or submit to, sexual activity with a third
 - 6 person outside Australia; or
 - 7 (ii) to be present with the first person while a third person
 - 8 engages in, or submits to, sexual activity (other than
 - 9 with the first or second person) outside Australia; and
- 10 (c) the second person is someone:
 - 11 (i) who is under 16; or
 - 12 (ii) who the first person believes to be under 16; and
- 13 (d) any of the following apply:
 - 14 (i) the conduct referred to in paragraph (a) occurs wholly
 - 15 or partly outside Australia;
 - 16 (ii) the second person is outside Australia when the conduct
 - 17 referred to in paragraph (a) occurs;
 - 18 (iii) the conduct referred to in paragraph (a) occurs wholly in
 - 19 Australia and the second person is in Australia when
 - 20 that conduct occurs.

21 Penalty: Imprisonment for 15 years.

22 (3) Absolute liability applies to subparagraphs (1)(c)(i) and (2)(c)(i)

23 and paragraphs (1)(d) and (2)(d).

24 Note 1: For *absolute liability*, see section 6.2.

25 Note 2: For a defence based on belief about age, see section 272.13.

26 (4) A person may be found guilty of an offence against subsection (1)

27 or (2) even if it is impossible for the sexual activity referred to in

28 that subsection to take place.

29 (5) For the purposes of subsection (1) or (2), it does not matter that the

30 second person is a fictitious person represented to the first person

31 as a real person.

32 **272.12 Engaging in conduct to “groom” persons under 16 years of**

33 **age**

34 (1) A person (the *first person*) commits an offence if:

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- (a) the first person engages in conduct in relation to a second person; and
- (b) the first person does so with the intention of making it easier to procure the second person:
 - (i) to engage in, or submit to, sexual activity with the first person outside Australia; or
 - (ii) to be present while the first person engages in, or submits to, sexual activity outside Australia; and
- (c) the second person is someone:
 - (i) who is under 16; or
 - (ii) who the first person believes to be under 16; and
- (d) any of the following apply:
 - (i) the conduct referred to in paragraph (a) occurs wholly or partly outside Australia;
 - (ii) the second person is outside Australia when the conduct referred to in paragraph (a) occurs;
 - (iii) the conduct referred to in paragraph (a) occurs wholly in Australia and the second person is in Australia when that conduct occurs.

Penalty: Imprisonment for 12 years.

- (2) A person (the *first person*) commits an offence if:
 - (a) the first person engages in conduct in relation to a second person; and
 - (b) the first person does so with the intention of making it easier to procure the second person:
 - (i) to engage in, or submit to, sexual activity with a third person outside Australia; or
 - (ii) to be present with the first person while a third person engages in, or submits to, sexual activity (other than with the first or second person) outside Australia; and
 - (c) the second person is someone:
 - (i) who is under 16; or
 - (ii) who the first person believes to be under 16; and
 - (d) any of the following apply:
 - (i) the conduct referred to in paragraph (a) occurs wholly or partly outside Australia;

- 1 (ii) the second person is outside Australia when the conduct
2 referred to in paragraph (a) occurs;
3 (iii) the conduct referred to in paragraph (a) occurs wholly in
4 Australia and the second person is in Australia when
5 that conduct occurs.

6 Penalty: Imprisonment for 12 years.

- 7 (3) Absolute liability applies to subparagraphs (1)(c)(i) and (2)(c)(i)
8 and paragraphs (1)(d) and (2)(d).

9 Note 1: For *absolute liability*, see section 6.2.

10 Note 2: For a defence based on belief about age, see section 272.13.

- 11 (4) A person may be found guilty of an offence against subsection (1)
12 or (2) even if it is impossible for the sexual activity referred to in
13 that subsection to take place.

- 14 (5) For the purposes of subsection (1) or (2), it does not matter that the
15 second person is a fictitious person represented to the first person
16 as a real person.

17 **272.13 Defence based on belief about age**

- 18 (1) Section 272.7, 272.8, 272.9 or 272.10 does not apply if, at the time
19 of the sexual intercourse or act of indecency, the defendant
20 believed that the person referred to in that section as being under
21 16 was 16 or over.

22 Note: A defendant bears an evidential burden in relation to the matter in this
23 subsection (see subsection 13.3(3)).

- 24 (2) Section 272.11 or 272.12 does not apply if:

- 25 (a) at the time the defendant engaged in the conduct constituting
26 the offence, he or she believed that the person referred to in
27 that section as being under 16 was 16 or over; and
28 (b) the conduct constituting the offence was consensual.

29 Note: A defendant bears an evidential burden in relation to the matter in this
30 subsection (see subsection 13.3(3)).

- 31 (3) In determining whether the defendant had the belief mentioned in
32 subsection (1) or (2), the jury may take into account whether the
33 alleged belief was reasonable in the circumstances.

1 **272.14 Defence based on valid and genuine marriage**

- 2 (1) Section 272.7 or 272.9 does not apply if the defendant proves that:
- 3 (a) at the time of the sexual intercourse or act of indecency, there
- 4 existed between the defendant and the person referred to in
- 5 that section as being under 16 a marriage that was valid, or
- 6 recognised as valid, under the law of:
- 7 (i) the place where the marriage was solemnised; or
- 8 (ii) the place where the offence was allegedly committed; or
- 9 (iii) the place of the defendant’s residence or domicile; and
- 10 (b) when it was solemnised, the marriage was genuine; and
- 11 (c) the conduct constituting the offence was consensual.

12 Note: A defendant bears a legal burden in relation to the matters in this

13 subsection (see section 13.4).

- 14 (2) Subsection 272.11(1) or 272.12(1) does not apply if the defendant
- 15 proves that:
- 16 (a) at the time he or she allegedly engaged in the conduct
- 17 constituting the offence against that subsection, there existed
- 18 between the defendant and the person referred to in that
- 19 subsection as being under 16 a marriage that was valid, or
- 20 recognised as valid, under the law of:
- 21 (i) the place where the marriage was solemnised; or
- 22 (ii) the place where the offence was allegedly committed; or
- 23 (iii) the place of the defendant’s residence or domicile; and
- 24 (b) when it was solemnised, the marriage was genuine.

25 Note: A defendant bears a legal burden in relation to the matters in this

26 subsection (see section 13.4).

27 **Subdivision C—Offences of benefiting from, encouraging or**

28 **preparing to commit sexual offences against children**

29 **overseas**

30 **272.15 Benefiting from offence against this Division**

- 31 (1) A person commits an offence if:
- 32 (a) the person engages in conduct; and
- 33 (b) the person does so with the intention of benefiting from
- 34 conduct of a kind that would constitute an offence against
- 35 this Division; and

1 (c) the conduct is reasonably capable of resulting in the person
2 benefiting from conduct of a kind that would constitute an
3 offence against this Division.

4 Penalty: Imprisonment for 17 years.

5 (2) Subsection (1) applies:

6 (a) whether the conduct is engaged in within or outside
7 Australia; and

8 (b) whether or not the person intends to benefit financially from
9 conduct of a kind that would constitute an offence against
10 this Division; and

11 (c) whether or not conduct of a kind that would constitute an
12 offence against this Division in fact occurs or has occurred.

13 (3) Absolute liability applies to paragraph (1)(c).

14 Note: For *absolute liability*, see section 6.2.

15 **272.16 Encouraging offence against this Division**

16 (1) A person commits an offence if:

17 (a) the person engages in conduct; and

18 (b) the person does so with the intention of encouraging conduct
19 of a kind that would constitute an offence against this
20 Division (other than this section or section 272.17); and

21 (c) the conduct is reasonably capable of encouraging conduct of
22 a kind that would constitute an offence against this Division
23 (other than this section or section 272.17).

24 Penalty: Imprisonment for 17 years.

25 Note: These are examples of conduct covered by paragraph (1)(c):

26 (a) assisting a person to travel outside Australia in order to commit
27 an act that would constitute an offence against Subdivision B;

28 (b) advertising an offer to assist a person, or an arrangement for
29 assisting a person, as mentioned in paragraph (a).

30 (2) Subsection (1) applies:

31 (a) whether the conduct is engaged in within or outside
32 Australia; and

33 (b) whether or not conduct of a kind that would constitute an
34 offence against this Division in fact occurs or has occurred.

1 (3) Absolute liability applies to paragraph (1)(c).

2 Note: For *absolute liability*, see section 6.2.

3 (4) In this section, *encourage* means:

4 (a) encourage, incite to or urge, by any means whatever,
5 (including by a written, electronic or other form of
6 communication); or

7 (b) aid, facilitate or contribute to, in any way whatever.

8 **272.17 Preparing to commit offence against this Division**

9 (1) A person commits an offence if the person does any act in
10 preparation for, or planning, conduct of a kind that would
11 constitute an offence against section 272.7, 272.8, or 272.15.

12 Penalty: Imprisonment for 17 years.

13 Note: An example of an act that would constitute an offence against
14 subsection (1) is booking an airline ticket to travel outside Australia in
15 preparation for engaging in sexual intercourse with a person who is
16 under 16 while outside Australia.

17 (2) A person commits an offence if the person does any act in
18 preparation for, or planning, conduct of a kind that would
19 constitute an offence against section 272.9 or 272.10.

20 Penalty: Imprisonment for 15 years.

21 Note: An example of an act that would constitute an offence against
22 subsection (2) is booking an airline ticket to travel outside Australia in
23 planning to commit an act of indecency on a person who is under 16
24 while outside Australia.

25 (3) A person commits an offence under subsection (1) or (2) even if:

26 (a) conduct of a kind that would constitute the offence referred
27 to in that subsection does not occur; or

28 (b) the person's act is not done in preparation for, or planning,
29 specific conduct of a kind that would constitute the offence
30 referred to in that subsection; or

31 (c) the person's act is done in preparation for, or planning, more
32 than one course of conduct of a kind that would constitute the
33 offence referred to in that subsection.

1 **Subdivision D—Video link evidence**

2 **272.18 When court may take evidence by video link**

3 In a proceeding for an offence against this Division, the court may,
4 on application by a party to the proceeding, direct that a witness
5 give evidence by video link if:

- 6 (a) the witness will give the evidence from outside Australia; and
7 (b) the witness is not a defendant in the proceeding; and
8 (c) the facilities required by section 272.19 are available or can
9 reasonably be made available; and
10 (d) the court is satisfied that attendance of the witness at the
11 court to give the evidence would:
12 (i) cause unreasonable expense or inconvenience; or
13 (ii) cause the witness psychological harm or unreasonable
14 distress; or
15 (iii) cause the witness to become so intimidated or distressed
16 that his or her reliability as a witness would be
17 significantly reduced; and
18 (e) the court is satisfied that it is consistent with the interests of
19 justice that the evidence be taken by video link.

20 **272.19 Technical requirements for video link**

- 21 (1) A witness can give evidence under a direction only if:
22 (a) the courtroom or other place in Australia where the court is
23 sitting (the ***Australian location***); and
24 (b) the place where the evidence is given (the ***overseas location***);
25 are equipped with video facilities that:
26 (c) enable appropriate persons at the Australian location to see
27 and hear the witness give the evidence; and
28 (d) enable appropriate persons at the overseas location to see and
29 hear appropriate persons at the Australian location.

- 30 (2) In subsection (1):

31 ***appropriate persons*** means such persons as the court considers
32 appropriate.

1 **272.20 Application of laws about witnesses**

2 A person who gives evidence under a direction is taken to give it at
3 the courtroom or other place in Australia where the court is sitting.

4 Note: This section has effect, for example, for the purposes of laws relating
5 to evidence, procedure, contempt of court and perjury.

6 **272.21 Administration of oaths and affirmations**

7 An oath or affirmation to be sworn or made by a witness who is to
8 give evidence under a direction may be administered either:

- 9 (a) by means of the video link, in as nearly as practicable the
10 same way as if the witness were to give the evidence at the
11 courtroom or other place in Australia where the court is
12 sitting; or
13 (b) as follows:
14 (i) on behalf of the court and as directed by it;
15 (ii) by a person (whether an Australian official or not)
16 authorised by the court;
17 (iii) at the place where the witness is to give the evidence.

18 **272.22 Expenses**

19 A court may make such orders as are just for payment of expenses
20 incurred in connection with giving evidence under a direction by
21 the court under this Subdivision.

22 **272.23 Other laws about foreign evidence not affected**

23 This Subdivision does not prevent any other law about taking
24 evidence of a witness outside Australia from applying for the
25 purposes of a proceeding for an offence against this Division.

26 **Subdivision E—Other rules about conduct of trials**

27 **272.24 Evidence relating to a person's age**

- 28 (1) For the purposes of this Division, evidence that a person was
29 represented to the defendant as being under or of a particular age
30 is, in the absence of evidence to the contrary, proof that the
31 defendant believed that person to be under or of that age.

- 1 (2) In determining for the purposes of this Division whether a person
2 is under 16, or was under 16 at a particular time, or how old a
3 person is or was at a particular time, a jury or court may treat any
4 of the following as admissible evidence:
5 (a) the person's appearance;
6 (b) medical or other scientific opinion;
7 (c) a document that is or appears to be an official or medical
8 record from a country outside Australia;
9 (d) a document that is or appears to be a copy of such a record.
- 10 (3) Subsection (2) does not make any other kind of evidence
11 inadmissible, and does not affect a prosecutor's duty to do all he or
12 she can to adduce the best possible evidence for determining the
13 question.
- 14 (4) If, on a trial for an offence against this Division, evidence may be
15 treated as admissible because of subsection (2), the court must
16 warn the jury that it must be satisfied beyond reasonable doubt in
17 determining the question.

18 **272.25 Alternative verdicts**

- 19 (1) If, on a trial for an offence against section 272.7, the jury is not
20 satisfied that the defendant is guilty of the offence, but is satisfied
21 that he or she is guilty of an offence against section 272.9, it may
22 find the defendant not guilty of the offence against section 272.7
23 but guilty of the offence against section 272.9.
- 24 (2) If, on a trial for an offence against section 272.8, the jury is not
25 satisfied that the defendant is guilty of the offence, but is satisfied
26 that he or she is guilty of an offence against subsection 272.10(1),
27 it may find the defendant not guilty of the offence against
28 section 272.8 but guilty of the offence against subsection
29 272.10(1).

30 **272.26 Double jeopardy**

31 If a person has been convicted or acquitted in a country outside
32 Australia of an offence against the law of that country in respect of
33 any conduct, the person cannot be convicted of an offence against
34 this Division in respect of that conduct.

1 **272.27 Sentencing**

2 (1) In determining the sentence to be passed, or the order to be made,
3 in respect of a person for an offence against Subdivision B, the
4 court must take into account the age and maturity of the person in
5 relation to whom the offence was committed, so far as these
6 matters are relevant and known to the court.

7 (2) The matters mentioned in subsection (1) are in addition to any
8 other matters the court must take into account (for example, the
9 matters mentioned in subsection 16A(2) of the *Crimes Act 1914*).

10 **Division 273—Offences involving child pornography**
11 **material or child abuse material outside Australia**

12 **Subdivision A—Preliminary**

13 **273.1 Definitions**

14 (1) Subject to subsections (2) and (3), an expression used in this
15 Division that is defined in Part 10.6 has the same meaning in this
16 Division as it has in that Part.

17 Note: These expressions include *child abuse material* and *child*
18 *pornography material*.

19 (2) A reference in this Division to a person having possession or
20 control of material includes a reference to the person:
21 (a) having possession of a computer or data storage device that
22 holds or contains the material; or
23 (b) having possession of a document in which the material is
24 recorded; or
25 (c) having control of material held in a computer that is in the
26 possession of another person (whether inside or outside
27 Australia).

28 (3) A reference in this Division to a person producing, distributing or
29 obtaining material includes a reference to the person:
30 (a) producing, distributing or obtaining material held or
31 contained in a computer or data storage device; or
32 (b) producing, distributing or obtaining a document in which the
33 material is recorded.

1 (4) Section 473.4 applies in relation to this Division as if the reference
2 in that section to Part 10.6 were a reference to this Division.

3 Note: Section 473.4 sets out matters that may be taken into account in
4 deciding whether particular material is offensive.

5 **273.2 Who can be prosecuted for an offence committed overseas**

6 A person must not be charged with an offence against this Division
7 that the person allegedly committed outside Australia unless, at the
8 time of the offence, the person was:

- 9 (a) an Australian citizen; or
- 10 (b) a resident of Australia; or
- 11 (c) a body corporate incorporated by or under a law of the
12 Commonwealth or of a State or Territory; or
- 13 (d) any other body corporate that carries on its activities
14 principally in Australia.

15 **273.3 Double jeopardy**

16 If a person has been convicted or acquitted in a country outside
17 Australia of an offence against the law of that country in respect of
18 any conduct, the person cannot be convicted of an offence against
19 this Division in respect of that conduct.

20 **273.4 Saving of other laws**

21 This Division is not intended to exclude or limit the operation of
22 any other law of the Commonwealth or any law of a State or
23 Territory.

24 **Subdivision B—Offences committed overseas involving child 25 pornography material or child abuse material**

26 **273.5 Possessing, controlling, producing, distributing or obtaining 27 child pornography material outside Australia**

- 28 (1) A person commits an offence if:
 - 29 (a) the person:
 - 30 (i) has possession or control of material; or
 - 31 (ii) produces, distributes or obtains material; or

- 1 (iii) facilitates the production or distribution of material; and
2 (b) the material is child pornography material; and
3 (c) the conduct referred to in paragraph (a) occurs outside
4 Australia.

5 Penalty: Imprisonment for 10 years.

- 6 (2) Absolute liability applies to paragraph (1)(c).

7 Note: For *absolute liability*, see section 6.2.

8 **273.6 Possessing, controlling, producing, distributing or obtaining**
9 **child abuse material outside Australia**

- 10 (1) A person commits an offence if:

11 (a) the person:

12 (i) has possession or control of material; or

13 (ii) produces, distributes or obtains material; or

14 (iii) facilitates the production or distribution of material; and

15 (b) the material is child abuse material; and

16 (c) the conduct referred to in paragraph (a) occurs outside
17 Australia.

18 Penalty: Imprisonment for 10 years.

- 19 (2) Absolute liability applies to paragraph (1)(c).

20 Note: For *absolute liability*, see section 6.2.

21 **Subdivision C—Defences**

22 **273.7 Defences to offences against this Division**

- 23 (1) A person is not criminally responsible for an offence against
24 section 273.5 or 273.6 because of engaging in particular conduct if
25 the conduct:

26 (a) is of public benefit; and

27 (b) does not extend beyond what is of public benefit.

28 In determining whether the person is, under this subsection, not
29 criminally responsible for the offence, the question whether the
30 conduct is of public benefit is a question of fact and the person's
31 motives in engaging in the conduct are irrelevant.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

- (2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
 - (a) enforcing a law of the Commonwealth, a State or Territory, or a foreign country; or
 - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory or a foreign country; or
 - (c) the administration of justice (whether within or outside Australia); or
 - (d) conducting scientific, medical or educational research.
- (3) Paragraph (2)(d) only applies if the person's conduct was, in all the circumstances, reasonable having regard to the purpose mentioned in that paragraph.
- (4) A person is not criminally responsible for an offence against section 273.5 or 273.6 if:
 - (a) the person is, at the time of the offence:
 - (i) a law enforcement officer; or
 - (ii) an intelligence or security officer; or
 - (iii) an officer or employee of the government of a foreign country performing similar duties to an intelligence or security officer; and
 - (b) the person is acting in the course of his or her duties; and
 - (c) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

- (5) A person is not criminally responsible for an offence against section 273.5 or 273.6 if the person engages in the conduct in good faith for the sole purpose of:
 - (a) assisting the Australian Communications and Media Authority to detect:
 - (i) prohibited content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*); or
 - (ii) potential prohibited content (within the meaning of that Schedule);

1 in the performance of the Authority's functions under
2 Schedule 5 or Schedule 7 to that Act; or

- 3 (b) manufacturing or developing, or updating, content filtering
4 technology (including software) in accordance with:
5 (i) a recognised alternative access-prevention arrangement
6 (within the meaning of clause 40 of Schedule 5 to the
7 *Broadcasting Services Act 1992*); or
8 (ii) a designated alternative access-prevention arrangement
9 (within the meaning of clause 60 of that Schedule).

10 Note: A defendant bears an evidential burden in relation to the matter in this
11 subsection (see subsection 13.3(3)).

12 **Subdivision D—Video link evidence**

13 **273.8 When court may take evidence by video link**

14 In a proceeding for an offence against this Division, the court may,
15 on application by a party to the proceeding, direct that a witness
16 give evidence by video link if:

- 17 (a) the witness will give the evidence from outside Australia; and
18 (b) the witness is not a defendant in the proceeding; and
19 (c) the facilities required by section 273.9 are available or can
20 reasonably be made available; and
21 (d) the court is satisfied that attendance of the witness at the
22 court to give the evidence would:
23 (i) cause unreasonable expense or inconvenience; or
24 (ii) cause the witness psychological harm or unreasonable
25 distress; or
26 (iii) cause the witness to become so intimidated or distressed
27 that his or her reliability as a witness would be
28 significantly reduced; and
29 (e) the court is satisfied that it is consistent with the interests of
30 justice that the evidence be taken by video link.

31 **273.9 Technical requirements for video link**

- 32 (1) A witness can give evidence under a direction only if:
33 (a) the courtroom or other place in Australia where the court is
34 sitting (the *Australian location*); and
35 (b) the place where the evidence is given (the *overseas location*);

- 1 are equipped with video facilities that:
- 2 (c) enable appropriate persons at the Australian location to see
- 3 and hear the witness give the evidence; and
- 4 (d) enable appropriate persons at the overseas location to see and
- 5 hear appropriate persons at the Australian location.
- 6 (2) In subsection (1):
- 7 *appropriate persons* means such persons as the court considers
- 8 appropriate.

9 **273.10 Application of laws about witnesses**

10 A person who gives evidence under a direction is taken to give it at

11 the courtroom or other place in Australia where the court is sitting.

12 Note: This section has effect, for example, for the purposes of laws relating

13 to evidence, procedure, contempt of court and perjury.

14 **273.11 Administration of oaths and affirmations**

15 An oath or affirmation to be sworn or made by a witness who is to

16 give evidence under a direction may be administered either:

- 17 (a) by means of the video link, in as nearly as practicable the
- 18 same way as if the witness were to give the evidence at the
- 19 courtroom or other place in Australia where the court is
- 20 sitting; or
- 21 (b) as follows:
- 22 (i) on behalf of the court and as directed by it;
- 23 (ii) by a person (whether an Australian official or not)
- 24 authorised by the court;
- 25 (iii) at the place where the witness is to give the evidence.

26 **273.12 Expenses**

27 A court may make such orders as are just for payment of expenses

28 incurred in connection with giving evidence under a direction by

29 the court under this Subdivision.

1 **273.13 Other laws about foreign evidence not affected**

2 This Subdivision does not prevent any other law about taking
3 evidence of a witness outside Australia from applying for the
4 purposes of a proceeding for an offence against this Division.

5 **10 Paragraphs 474.27(1)(b), (2)(b) and (3)(b) of the *Criminal***
6 ***Code***

7 Repeal the paragraphs.

8 **11 Subsections 474.27(4) and (5) of the *Criminal Code***

9 Repeal the subsections.

10 **12 Subsection 474.28(11) of the *Criminal Code***

11 Repeal the subsection.

12 **13 Dictionary in the *Criminal Code***

13 Insert:

14 *act of indecency* has the meaning given by section 272.2.

15 **14 Dictionary in the *Criminal Code***

16 Insert:

17 *procure* a person, in relation to sexual activity, includes:

- 18 (a) encourage, entice or recruit the person in relation to that
19 activity; or
20 (b) induce the person (whether by threats, promises or otherwise)
21 in relation to that activity.

22 **15 Dictionary in the *Criminal Code***

23 Insert:

24 *sexual activity* means:

- 25 (a) sexual intercourse; or
26 (b) an act of indecency; or
27 (c) any other activity of a sexual or indecent nature that involves
28 the human body, or bodily actions or functions (whether or
29 not that activity involves physical contact between people).

1 **16 Dictionary in the *Criminal Code***

2 Insert:

3 *sexual intercourse* has the meaning given by section 272.3.

4 ***Surveillance Devices Act 2004***

5 **17 Subparagraph 30(1)(a)(iii)**

6 Repeal the subparagraph.

7 **18 Subparagraph 30(1)(a)(viii)**

8 Omit “or 270”, substitute “, 270, 272 or 273”.

9 ***Telecommunications (Interception and Access) Act 1979***

10 **19 Subsection 5D(2A)**

11 Repeal the subsection.

12 **20 Subparagraph 5D(3)(d)(xi)**

13 Omit “(including an offence against Part IIIA of the *Crimes Act 1914*)”.

14 **21 Subsection 5D(3B)**

15 Repeal the subsection.

16 **22 Before subsection 5D(4)**

17 Insert:

18 *Sexual offences against children and offences involving child*
19 *pornography*

20 (3C) An offence is also a serious offence if:

21 (a) it is an offence against Division 272 or 273, or
22 section 474.19, 474.20, 474.22, 474.23, 474.26 or 474.27, of
23 the *Criminal Code*; or

24 (b) the particular conduct constituting the offence otherwise
25 involved, involves or would involve:

26 (i) the production, publication, possession, supply or sale
27 of, or other dealing in, child pornography; or

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(ii) consenting to or procuring the employment of a child, or employing a child, in connection with child pornography.